IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.01.2007

Coram

The Honourable Mr. JUSTICE K.MOHAN RAM

Civil Miscellaneous Appeal No.1337 of 2006
and C.M.P.No.5799 of 2006

N.S.Murugan .... Appellant/ Petitioner

-Vs.-

1. The Chief Controlling Revenue
Authority-cum-Inspector
General of Registration, Registration Act, Chennai.

2. The Special Deputy Collector (Stamps)
Room No.9, III Floor, District Collectorate,
Korampallam, Tuticorin

3. The Joint Sub Registrar-II
Tuticorin ... Respondents/ Respondents

Civil Miscellaneous Appeal under Section 47-A(10) of Indian Stamps Act against Proceedings No.7232/U1/2005, dated 20.01.2006 on the file of the Chief Controlling Revenue Authority and Inspector General of Registration, Madras and against the Proceedings No.1940 of 2000 dated 29.10.2001 on the file of the Deputy Collector (Stamps), Tuticorin.

For Appellant : Mr. K.R.Thamizhmani
For Respondents : Mr. M.Rangarajulu, Government Advocate.

J U D G M E N T

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The above appeal has been filed against the order dated 20.01.2006 passed by the first respondent in exercise of his suo motu power of revision under Section 47-A(6) of the Indian Stamp Act 1899 (hereinafter referred to as "the Act") fixing the market value at the rate of Rs.160/- per square feet for an extent of 1 acre and 15.126 cents purchased and registered by the appellant vide Document No.691/2000 dated 07.07.2000 and demanding stamp duty payable on the said value.

2. The brief facts of the case are set out below:-

The appellant purchased an extent of 1 acre and 15.126 cents of land comprised in T.S.Nos.4137/P, 4136/1A(P), 4136/5A-1 part and 4138/1 of Polanaickenpettai, Tuticorin for a total sale consideration of Rs.2,50,000/- under a sale deed dated 07.07.2000

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and presented the sale deed for registration before the third respondent herein. The third respondent referred the sale deed under Section 47-A(1) of the Act to the second respondent. The second respondent issued notices in Form-I and Form-II dated 16.10.2000 and 22.11.2000 calling upon the appellant to appear for enquiry and site inspection on 27.11.2000 and to produce evidence if any in support of his claim. The appellant by his representations dated 07.02.2001 and 16.07.2001 sent to the first and second respondents respectively claimed that the market value paid at Rs.295/- per square feet of land dealt with under Document No.548/2000 should not be adopted as the basis for fixing the market value of the document in question. The second respondent after notice to the appellant inspected the suit property on 29.10.2001 and after proper enquiry by his order dated 15.11.2001 fixed the market value of the property at Rs.31.50 per square feet. The said value fixed by the second respondent was accepted by the appellant and deficient stamp duty was paid and pursuant to that the document was released.

3. The first respondent on receipt of intimation from the District Registrar, Tuticorin on 29.11.2002 about the payment of deficiency of stamp duty and releasing of the documents invoked his suo motu power of revision under Section 47-A(6) of the Act, as he felt that the valuation at Rs.31.50 per square feet by the second respondent would result in loss of Revenue to the Government. A show cause notice dated 19.11.2003 calling upon the appellant to show cause as to why the value of the land purchased under the document in question should not be fixed at Rs.295/- per square feet and the deficient stamp duty collected from the appellant. In the show cause notice it was brought to the notice of the appellant that as on 01.04.1999, as per the guideline register, the guideline value for Polanaickenpettai , where the land in question is situated was Rs.143/- per square feet and as per document No.560/1999 the value per square feet was Rs.293.29, as on 01.04.2000 the guideline value per square feet was Rs.293.30 and as per document No.548/2000 the market value was Rs.295/- per square feet. The appellant sent his reply dated 16.07.2001 stating that he purchased the land at Rs.6.27 per square feet and the land covered by document No.548/2000 is located in the main road and the said land is a house site wherein a house is located and the said property is surrounded by residential houses and the purchaser under the document has boosted the value of the property to get loan from Life Insurance Corporation and hence the value mentioned in the said document cannot be taken as the basis for fixing the value for the land covered by the document in question. The appellant further stated that the site and the building bearing Door No.111 J/1 situated in Town Survey No.4137/1-A 3A-B has been sold at Rs.22.44 per square feet, the land purchased by the appellant is provided with 20 feet wide pathway only and it is located in an interior place surrounded by an oil mill and a grave yard and as such the land is not suitable to be used for residential purposes but the same can be used only as an industrial site. Thereafter, the first respondent issued various notices fixing the various dates for personal hearings. The appellant sent his representations containing the very same contentions as stated

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in his reply to the show cause notice. The appellant appeared for the personal hearing and reiterated the same contentions put forth in his various representations. The first respondent by his order dated 20.01.2006 taking into consideration the submissions made by the appellant, the report submitted by the DIG Registration and considering the fact that the land in question is located about 300 feet north and 600 feet east from the new bus stand on the Tuticorin-Ettayapuram Road, the market value of the land covered by Document No.372/2000 had been fixed at Rs.205.50 per square feet, under a reference made under Section 47-A of the Act and also taking into consideration that the land in question is situated in an industrial area and by accepting the recommendation of the DIG Registration fixed the market value at Rs.160/- per square feet. Being aggrieved by that, the above appeal has been filed.

4. Heard Mr. K.R.Thamizhmani learned counsel for the appellant and Mr.M.Rangarajulu learned Government Advocate for the respondents.

5. The learned counsel for the appellant made the following submissions:-

(a) The respondents have not followed the principles specified under Rule 5 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instrument) Rules 1968 (hereinafter referred to as "the Rules") in determining the market value of the land in question.

(b) The first respondent ought not to have taken into consideration the report of the District Registrar, Tuticorin, dated 12.08.2003 without furnishing the copy thereof to the appellant.

(c) The first respondent ought to have relied upon the Inspection Report of the Deputy Inspector General of Registration as the inspection by DIG Registration was conducted without notice to the appellant and the copy of the report was also not furnished to the appellant.

(d) The order of the first respondent does not disclose the basis on which the Deputy Inspector General of Registration has fixed the value at Rs.160/- per square feet.

While elaborating his submissions the learned counsel for the appellant submitted that in the notices dated 12.07.2005 and 24.08.2005 issued by the first respondent for fixing the date of personal hearings, the first respondent has not referred to the report of the DIG Registration dated 12.04.2005. The learned counsel for the appellant further submitted that the first respondent has not classified the usage of the land as contemplated in Rule 5(a)(ix) of the Rules. The learned counsel further submitted that only the potential value of the land namely as a house site can be taken into account and even if it is taken so, 1/3rd area should be deducted for providing roads and 10% should be deducted towards public purpose but the first respondent has not done so. According to the learned counsel, under Rule 11-A(c) of the Rules the Deputy Inspector General of Registration ought to have issued a notice to the appellant before inspecting the property but since admittedly no notice was issued, this report should not have been relied upon by the first respondent and in support of his

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contentions the learned counsel relied upon a decision reported in 1999 (1) M.L.J. 286 (R.Nagarajan Vs. The Revenue Divisional Officer, Sivakasi, Kamarajar District).

6. Per contra the learned Government Advocate for the respondents submitted as follows:-

In the document in question itself the property has been described as "kid epyk;" bounded on the east and west by compound walls. In all his representations the appellant has submitted that the property can be used only as an industrial site and not fit for residential purposes and the said contention of the appellant was found to be correct by the DIG Registration on his inspection and the first respondent has accepted the report of the DIG Registration and has valued the property in question only as an industrial site. Therefore, the learned Government Advocate submitted that the contention of the learned counsel for the appellant that deduction towards provision of Road and public purpose etc., should have been made by the first respondent is fallacious as the property has not been classified as a residential site. The learned Government Advocate submitted that the failure on the part of the DIG Registration to issue notice before inspecting the property has not caused any prejudice to the appellant as already a notice of inspection was issued by the second respondent when he inspected the property. Similarly the learned Government Advocate submitted that the non-furnishing of the copy of the DIG's report to the appellant has not caused any prejudice to him as he has perused the report at the time of personal hearing. He further submitted that though the perusal of the report by the appellant has been specifically mentioned in the counter affidavit filed by the first respondent, the same has not been controverted by filing any reply affidavit and it has not been established as to how the appellant has been prejudiced by the non-issuing of the notice or by the non-furnishing of the copy of the report. He further submitted that the contents of the DIG's report except the value suggested therein has been accepted by the appellant in his various representations. He further submitted that Section 47-A(8) of the Act only contemplates that a reasonable opportunity should alone be given and in this case ample opportunity has been given to the appellant to put forth his case. He further submitted that the first respondent has considered all the aspects and has actually accepted the appellant's classification of the property namely as an industrial site and therefore the contention of the learned counsel for the appellant that the first respondent has not classified the usage of the land under Rule 5(a)(ix) of the Rules is not sustainable. The learned Government Advocate further submitted that a perusal of the original records discloses that the first respondent had called for the details relating to the value of the lands sold in the neighbourhood and also the details of various proceedings relating to the references made under Section 47-A of the Act and has also taken into consideration the percentage of increase in the market value spread over a period of five years prior to 2000. The Learned Government Advocate relied upon the decision reported in 2000 (1) C.T.C. 374 (S.C.) (Duncans Industries Limited Vs. State of Uttar Pradesh and others) and 2001 (3) C.T.C. 176 (S.C.) (State of Uttar

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Pradesh Vs. Harendra Arora) in support of his contention that unless actual prejudice has been caused to the appellant, the mere non-furnishing of the report of the DIG Registration cannot be a ground for interfering with the order of the first respondent.

7. I have carefully considered the submissions made on either side, the materials on record and the original file that has been produced by the learned Government Advocate as directed by this Court.

8. The various provisions contained in Section 47-A of the Act provided for the procedure to be followed as to how the instruments of conveyance etc., which are undervalued have been dealt with. In this case, we are concerned with Section 47-A (6) of the Act, which reads as follows:-

> "47-A (6) :-
> The Chief Controlling Revenue Authority may, suo motu, call for and examine an order passed under sub-section (2) or sub-section (3) and if such order is prejudicial to the interests of revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit".

The explanation to Section 47-A is also relevant and which reads as follows:-

> "Explanation. - For the purpose of this Act, market value of any property shall be estimated to be the price which, in the opinion of the Collector or the Chief Controlling Revenue Authority or the High Court, as the case may be, such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance, exchange, gift, release of benami right or settlement."

While elaborating the scope of explanation to Section 47-A of the Act, a learned Judge of this Court in the decision reported in A.I.R. 1982 Madras 138 (Collector of Nilgiris at Ootacamund Vs. M/s. Mahavir Planations Pvt. Ltd.,) has observed as follows:-

> "13. .... What the conception of open market in the Explanation to S. 47-A of the Stamp Act conveys is that the market value should be determined on the basis of conditions of equilibrium and not on the basis of speculative trends, where by reason of exercise of economic power on the part of influential interests in real estate which wield enormous bargaining authority, prices of individual properties are either rigged up or depressed, tending to distort the price structure. Open market is, in my judgement, an objective standard which lays down that the market value to be adopted by the Collector and the market value which the parties are required to adopt in their instruments must be a fair market

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value in the sense that there are no economic shackles or inhibitions of any kind which prevent the price level from finding its level. Thus, the conception of open market rules out, at one end, fancy prices and, at the other end, distress sales. Economic equilibrium is the hall-mark of open market".

In the light of the above said observations the instant case has to be considered and the fair market value of the property in question should be fixed.

9. As contended by the learned counsel for the appellant it is no doubt true that no notice was issued to the appellant by the DIG Registration before inspecting the property in question. But as rightly contended by the learned Government Advocate the appellant has not disputed the contents of the report of the Deputy Inspector General of Registration except the value suggested by him. Pursuant to his inspection the DIG Registration has pointed out that the property in question can be used only as an industrial site which actually lends support to the contention of the appellant. It was the consistent case of the appellant that the property is fit to be used only as an industrial site and not fit to be used for residential purposes. Therefore, in the considered view of this Court, the non-issuance of notice to the appellant has not caused any prejudice to the appellant. Though this Court, as seen from the decision reported in 1999 (1) M.L.J. 286 (referred to supra) has held that the issuance of notice for inspection is mandatory and on the ground of non-issuance of notice, this Court had set-aside the impugned order and remanded the matter back to the Revenue Divisional Officer to exercise his power under Section 47-A of the Act, this Court is of the view that, as pointed out above, no prejudice has been caused to the appellant, it is not necessary to set-aside the order of the first respondent on this ground.

10. The Apex Court, while considering the fact of non-furnishing of report of the enquiry officer to a delinquent employee in the light of the provisions contained in Civil Services (Classification Control and Appeal) Rules 1930, in the decision reported in 2001 (3) C.T.C. 176 (referred to supra) has observed as follows:-

"23. Thus, from a conspectus of the aforesaid decisions and different provisions of law noticed, we hold that provision in Rule 55-A of the rules for furnishing copy of enquiry report is procedural one and of a mandatory character, but even then a delinquent has to show that he has been prejudiced by its non-observance and consequently the law laid down by the Constitution Bench in the case of ECIL, to the effect that an order passed in a disciplinary proceeding cannot ipso facto be quashed merely because a copy of the enquiry report has not been furnished to the delinquent officer, but he is obliged to show that by non-furnishing of such a report he has been prejudiced, would apply even to

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cases where there is requirement of furnishing copy of enquiry report under the statutory provisions and/or service rules".

11. In the decision reported in 2000 (1) C.T.C. 374 (referred to supra) while considering the question of valuation under Section 47-A of the Act the Apex Court has observed as follows:-

"15. The question of valuation is basically a question of fact and this court is normally reluctant to interfere with the finding on such a question of fact if it is based on relevant material on record. The main objection of the appellant is regard to the valuation arrived at by the authorities is that the Collector originally constituted an Enquiry Committee consisting of the Assistant Inspector General (Registration), General Manager, District Industries Centre, Sub-Registrar and the Tahsildar. After the report was submitted by the Sub-Committee for the reasons of its own, the Collector reconstituted the said Enquiry Committee by substituting Additional City Magistrate in place of Sub-Registrar. This substitution of the Enquiry Committee, according to the appellant, is without authority of law. We are unable to accept this contention, Constitution of an Enquiry Committee by the Collector is for the purpose of finding out the true market value of the property conveyed under the Deed. In this process, the Collector has every authority in law to take assistance from such source as is available, even if it is amounts to constituting or reconstituting more than one Committee. That apart, the appellant has not been able to establish any prejudice that is caused to it by reconstitution of the Expert-Enquiry Committee".

12. Basing reliance upon the above said observations of the Apex Court, the Learned Government Advocate submitted that in the instant case the appellant has not established that any prejudice has been caused to him by the non-furnishing of the report of the DIG Registration. He further contended that though it has been specifically stated by the first respondent in his counter affidavit that the appellant had actually perused the report of the DIG Registration at the time of personal hearing the same has not been controverted by filing any reply affidavit and therefore it is established that the appellant had actually perused the report of the DIG Registration. Therefore, if really the appellant wanted to raise any objections for the said report, he could have very well done so before the first respondent in the course of personal hearing. Having not raised any objections it is not open to the appellant to contend that the order of the first respondent is vitiated. The Learned Government Advocate further submitted that the learned counsel for the appellant is unable to show even before this Court as to how the appellant was prejudiced by the non-furnishing of the report. The said contention of the learned

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Government Advocate merits acceptance.

13. As pointed out above, the first respondent has treated the property covered by the document in question as an industrial site and thereby has accepted the contention of the appellant and therefore the contention of the learned counsel for the appellant that the first respondent has not classified the usage of the property as contemplated under Rule 5(a)(ix) of the Rules is liable to be rejected.

14. The only remaining question to be considered is as to whether the fixation of the market value of the property at Rs.160/- per square feet is based on acceptable material and whether it reflects the fair price. A perusal of the original records produced by the learned Government Advocate shows that the DIG Registration has furnished statistics relating to the fixation of value in respect of the properties situated in the same locality. From the statistics furnished, it is seen that the Special Deputy Collector (Stamps) Tuticorin had fixed Rs.94.30 per square feet for 21 documents registered in the year 1999 and Rs.205.50 for document No.372 of 2000. Considering the disadvantages pertaining to the property in question as evidenced from the report of the DIG Registration the first respondent had not taken into consideration the value mentioned in Document No.548/2000 and has also not relied upon the value of Rs.205.50 per square feet as fixed for the property covered by Document No.372 of 2000. It is not the case of the appellant himself that property in question is an agricultural land and as the property has been described as "kid" which will mean that the property is a building site the first respondent on the materials on record came to the conclusion that the properties is not fit for residential purpose but it is fit only for industrial purpose accepted the classification of the property as industrial site as claimed by the appellant and based on the sales statistics and the recommendation of the DIG Registration has arrived at the market value of the property in question at Rs.160/- per square feet.

15. It is pertinent to point out that though the learned counsel for the appellant contended that the value fixed at Rs.160/- per square feet for the land in question is on the higher side, no efforts whatsoever have been taken by the appellant to produce any contemporaneous document of conveyance relating to any land situated near the land in question and which has got similar advantages / disadvantages. Even during the course of personal hearing, the appellant could have produced such documents and convinced the first respondent to fix lesser value for the land in question. Even before this Court, no such effort had been taken. Therefore, this Court is of the considered view that the first respondent has determined the market value of the land in question on the basis of conditions of equilibrium and not on the basis of speculative trends and the first respondent has also taken into consideration the sales statistics relating to the neighbouring lands and the ratio of growth of the value of the lands and therefore no interference is called for. Therefore, it cannot be said that the value arrived at

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by the first respondent is not based on any acceptable materials. Hence, this Court finds absolutely no reason to interfere with the value fixed by the first respondent.

16. For the reasons stated above, the appeal fails and the same is dismissed. However, there will be no order as to costs. Consequently, the connected CMP is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

srk

To

1. The Chief Controlling Revenue Authority-cum-Inspector General of Registration, Registration Act, Chennai.

2. The Special Deputy Collector (Stamps)
Room No.9, III Floor, District Collectorate, Korampallam, Tuticorin

3. The Joint Sub Registrar-II, Tuticorin.

1 cc to Mr.K.R. Tamizhmani, Advocate, Sr,4277

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